

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARK A. TORNELLO,

Plaintiff,

-against-

COUNTY OF WESTCHESTER,

Defendant.
-----X

**DECLARATION IN
SUPPORT OF MOTION
TO DISMISS**

07 civ. 6697 (CLB)

CHRISTIE L. MAGNO, an attorney duly admitted to practice before the United States District Court for the Southern District of New York, hereby declares pursuant to 28 U.S.C. §1746:

1. I am an Assistant County Attorney in the office of Charlene M. Indelicato, Westchester County Attorney, attorney for the defendant County of Westchester. I make this Declaration in support of the Defendant's motion to dismiss the Complaint in its entirety with prejudice pursuant to Federal Rules of Civil Procedure ("F.R.Civ. P.") 12(b), subdivision (6) of the Federal Rules of Civil Procedure for an order dismissing the complaint for (1) failure to state a claim upon which relief can be granted for malicious prosecution under 42 U.S.C. § 1983; (2) failure to state a claim for municipal liability against the County; (3) failure to meet the pleading requirements under F.R.Civ. P. 8; and (4) with respect to any alleged state law claims, Plaintiff's failure to sufficiently state a cause of action against the County.

2. Exhibit "A" is the complaint filed by Plaintiff.

3. Exhibit "B" contains a misdemeanor information dated December 4, 2006 and a superseding misdemeanor information dated February 28, 2007.

4. Exhibit "C" is a letter dated March 12, 2007 to the Honorable Janet DiFiore from Plaintiff's counsel.

5. Exhibit "D" is a letter dated March 15, 2007 from Assistant District Attorney Michael F. Hughes, Chief of the Public Integrity Bureau to Plaintiff's counsel.

6. As discussed in the accompanying Memorandum of Law (which is incorporated by reference herein), the complaint should be dismissed in its entirety. The unreported cases referred to in the memorandum of law are attached hereto alphabetically as "Unreported Cases."

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 29, 2007
White Plains, New York

CHARLENE M. INDELICATO
County Attorney
Attorney for County Defendant

/s/ _____
By: Christie L. Magno (CLM 1415)
Assistant County Attorney
of Counsel
(914) 995-5103